UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,924	04/30/2007	M. Yavuz Dedegil	2003P01405WOUS	9207

46726 7590 03/07/2012

BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN, NC 28562

EXAMINER	
BLAN, NICOLE R	
ART UNIT	**PAPER NUMBER**
1714	

NOTIFICATION DATE	DELIVERY MODE
03/07/2012	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte M. YAVUZ DEDEGIL, RUEDIGER EIERMANN and
HELMUT JERG

Appeal 2011-006455
Application 10/582,924
Technology Center 1700

Before BRADLEY R. GARRIS, ADRIENE LEPIANE HANLON, and JAMES C. HOUSEL, *Administrative Patent Judges*.

HOUSEL, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision finally rejecting claims 16-22 and 24-30 under 35 U.S.C. § 103(a). We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

Appellants claim a dishwashing machine comprising a dishwashing container in which items to be subjected to the application of a dishwashing

liquid are disposed, and a filter system including a foam volume, wherein the dishwashing liquid is discharged from the container to the filter system for passage through the foam volume to at least partially remove dishwashing residue from the dishwashing liquid. (Claim 16). In addition, Appellants claim a method for operating such a dishwashing machine comprising discharging dishwashing liquid through the foam volume to at least partially remove residue from the dishwashing liquid, conducting at least a portion of the cleaned dishwashing liquid back to the washing cycle of the machine, and conducting at least a portion of the foam volume containing residue exteriorly of the machine. (Claim 27).

Representative claim 16, the sole independent apparatus claim on appeal, reads as follows:

> 16. A dishwashing machine comprising:
>
> a dishwashing container in which items to be subjected to the application of a dishwashing liquid thereto are disposed; and
>
> a filter system for cleaning dishwashing liquid, the filter system including a foam volume and the filter system and the dishwashing container being communicated with one another such that at least some of the dishwashing liquid can be discharged from the dishwashing container in association with a washing cycle of the dishwashing machine to the foam volume for passage of the discharged dishwashing liquid through the foam volume, wherein dishwashing residue contained in the dishwashing liquid is at least partially absorbed or retained by the foam volume.

Representative claim 27, the sole independent method claim on appeal, reads as follows:

27. A method for operating a dishwashing machine, the dishwashing machine including a dishwashing container in which items to be subjected to the application of a dishwashing liquid thereto are disposed and a filter system for cleaning dishwashing liquid, the filter system including a foam volume and the filter system and the dishwashing container being communicated with one another such that at least some of the dishwashing liquid can be discharged from the dishwashing container in association with a washing cycle of the dishwashing machine to the foam volume for passage of the discharged dishwashing liquid through the foam volume, wherein dishwashing residue contained in the dishwashing liquid is at least partially absorbed or retained by the foam volume, the method comprising the steps of:

discharging at least some of the dishwashing liquid from the washing cycle of the dishwashing machine through the foam volume, wherein dishwashing residue contained in the dishwashing liquid is at least partially absorbed or retained by the foam volume;

conducting at least a portion of cleaned dishwashing liquid back to the washing cycle of the dishwashing machine; and

conducting at least a portion of the foam volume containing the retained dishwashing residue exteriorly of the dishwashing machine.

The references listed below are relied upon by the Examiner as evidence of obviousness:

Valenzuela	5,234,112	Aug. 10, 1993
Damron	6,402,855 B1	Jun. 11, 2002
Kim	2002/0074026 A1	Jun. 20, 2002
Kemper	6,413,366 B1	Jul. 2, 2002

Under 35 U.S.C. § 103(a), the Examiner rejects:

claims 16-22, 24, 26-28, and 30 as unpatentable over Kim in view of Kemper;

claim 25 as unpatentable over the references applied against claims 16 and 17 and further in view of Damron; and

claim 29 as unpatentable over the references applied against claim 27 and further in view of Valenzuela.

ISSUE

The issue is whether claims 16 and 27 are unpatentable under 35 U.S.C. § 103(a) over Kim in view of Kemper. Specifically, the issue is whether the Examiner applied impermissible hindsight in finding that one of ordinary skill in the art would have been led by Kim and Kemper to a dishwashing machine and method of operating the machine, in which the machine has a filter system including a foam volume through which the dishwashing liquid is fed whereby residue from the liquid is retained in the foam. The rejections of the dependent claims also turn on this issue.

ANALYSIS

The Examiner acknowledges that Kim "does not teach that the filter system includes a foam volume or that at least some of the dishwashing liquid can be discharged to the foam volume so that dishwashing residue contained in the dishwashing liquid is retained by the foam volume" (Ans. 4). Instead, the Examiner relies on Kemper as teaching "a filter for removing contaminants from a solution using foam such that the liquid solution is passed through the foam in order to remove contaminants from the liquid [abstract; col. 2, line 30-col. 3, line 7]" (*id.*). The Examiner then concludes it would have been obvious to use Kemper's foam filter in place

of Kim's filter with a reasonable expectation of success based on Kemper's teaching that his "filter removes contaminants from an incoming liquid by use of foam in order to retain the contaminants in the foam" (*id.* para. bridging 4-5).

Appellants emphasize that:

> Kemper is related to a filter process for separating at least a part of suspended contaminating particles out of a suspension containing fibrous material. The flotation process in Kemper is quite different than the foam dishwashing process used in the present invention. The Kemper process utilizes the differences between fibrous material and undesired solid particles in such a way that the fibrous material remains in the fiber suspension due to its hydrophilic nature whereas the mentioned material particles are hydrophobic and, therefore, move into the foam along with the air bubbles. As such, the material particles that Kemper relates to are primarily related to ink particles and adhesives, fine plastic particles, and resins (see col. 1, lines 11-36). Accordingly, one of ordinary skill in the art would not look to Kemper for a dishwashing filter solution, and therefore any such knowledge attributable to a Kemper process being used in a dishwasher is gleaned only from Appellants' own disclosure.

(Br. para. bridging 7-8).

Appellants' argument is persuasive of reversible error.

Determining obviousness is a legal determination based on underlying factual inquiries. *Graham v. John Deere Co. of Kansas City,* 383 U.S. 1, 17 (1966). These inquiries are (1) the scope and content of the prior art, (2) the differences between the prior art and the claims at issue, (3) the level of ordinary skill in the art, and (4) any secondary considerations of nonobviousness. These inquiries require the fact finder to construe the prior art in light of the claimed subject matter.

The hypothetical person "of ordinary skill in the art" standard does not use Appellants' own disclosure against the claimed invention in impermissible hindsight reconstruction. Hindsight is impermissible when an Examiner rejects an application in reliance upon teachings not drawn from any prior art disclosure, but from the Appellants' own disclosure. *See In re Deminski,* 796 F.2d 436, 443 (Fed. Cir. 1986); *W.L. Gore & Assocs., Inc. v. Garlock, Inc.,* 721 F.2d 1540, 1553 (Fed. Cir. 1983) *cert. denied,* 469 U.S. 851 (1984); *Grain Processing Corp. v. American Maize-Products Co.,* 840 F.2d 902, 907 (Fed. Cir. 1988). "Obviousness cannot be established by hindsight combination to produce the claimed invention." *In re Dance,* 160 F.3d 1339, 1343 (Fed. Cir. 1998).

In this case, the Examiner failed to properly apply the hypothetical person standard in light of prior art selected with the *Graham* inquiries in mind. Absent impermissible hindsight, we find that one of ordinary skill in the art would not have looked to the Kemper disclosure for a solution to any problem of the filter system of the dishwashing machine of Kim. Kim teaches the filter system removes "garbage such as food particles separated from the dishes d (sic) is filtered out or strained out" (Kim para. [0011]).

In contrast, Kemper relates to the selective separation of hydrophobic contaminates, such as ink particles, adhesives, fine plastic particles, and resins, out of an aqueous fibrous suspension (Kemper col. 1, lines 25-29). Such a purpose is divergent from the filtering of Kim.

The Examiner urges that Kemper's purpose is the same as Kim's, "namely removing contaminants from a liquid" (Ans. 11). We find that such a characterization over-generalizes the express purpose of Kemper to selectively separate hydrophobic contaminates from hydrophilic fibrous

material in a liquid. The Examiner offers no evidence or scientific reasoning establishing that the hydrophobic contaminates of Kemper have similar characteristics to the food particle contaminates of Kim. Thus, absent Appellants' own disclosure, we find that one of ordinary skill in the art would not have found the teachings of Kemper instructive in modifying the filter of Kim. *See In re Clay*, 966 F.2d 656, 658 (Fed. Cir. 1992) (where the purpose of a reference solution is different from the primary reference, the hypothetical person would have little motivation or occasion to consider it).

Accordingly, the Examiner's obviousness conclusion rests on impermissible hindsight in reliance on the Appellants' own disclosure. We cannot sustain, therefore, the 35 U.S.C. § 103(a) rejection of claims 16-22, 24, 26-28, and 30 as unpatentable over Kim in view of Kemper.

The Remaining Rejections

The rejections of dependent claims 25 and 29 under 35 U.S.C. § 103(a) as being unpatentable over the Kim and Kemper combination, further in view of Damron and Valenzuela, respectively, also turn on this issue. Accordingly, we cannot sustain either of these rejections for the reasons given above.

Conclusion

The decision of the Examiner is reversed.

REVERSED

kmm